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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,247	08/09/2001	Mark H. Miller	800619	1880

909 7590 09/23/2003  
PILLSBURY WINTHROP, LLP  
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EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

# Office Action Summary

Application No.  
09/682,247

Applicant(s)  
MILLER et al.

Examiner  
KURT ROWAN

Art Unit  
3643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 25, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 42-64 and 67-119 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-64 and 67-119 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other:  |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 25, 2003 has been entered.

### ***Claim Rejections - 35 U.S.C. § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 42-49, 58-59, 67-73, 82-88, 93-100, 109-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheshire (5,255,468).

The patent to Cheshire shows an insect trap in Figs. 1-2, 4, that generates an air outflow using motion and heat to attract insects that flows outwardly from the device to create a plume flowing downwardly and spreading radially from the device. Cheshire also generates an inflow substantially counter to and immediately adjacent an upper portion of the plume and then into the

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trap such that insects attracted to said outflow and flying along the upper portion of the plume towards the device intersect the inflow and are drawn into the inflow as discussed column 2, lines 28-68, column 8, lines 43-55. Cheshire shows a cover member 11-13. Figure 4 of Cheshire shows insects being sucked into the trap and column 9, lines 47-49 states that the exhaust flow from the trap contributes to the upward flight reflex to entrap insects such as mosquitoes in the inflow. This is the relationship between the upward inflow and the counter downflow of air. Since both the motor that operates the fan and the light of Cheshire are in the outflow, the heat from these devices function as an attractant which would be added to the outflow. While the light acts as an attractant without the airflow, clearly the heat from the light and the fan motor add to the effect. To overcome this rejection, the claims should recite what the attractant is since Cheshire does not use carbon dioxide.

***Claim Rejections - 35 U.S.C. § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 50-52, 60-62, 101-103, 111-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheshire, Jr.

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The patent to Cheshire shows an insect trap as discussed above. Cheshire discloses the use of a collection bag in column 4, lines 31-32 which would appear to be mounted on the outside of lower portion of the housing 15 which is a tubular member. In reference to claim 50, Cheshire does not disclose mounting an insect trap on the inside of the tubular member, but it would have been obvious to mount the a trap on the inside of the tubular member since the function is the same and no stated problem is solved.

6. Claims 53-57, 63, 64, 74-81, 89-92, 104-108, 114-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheshire, Jr. (5,255,468) in view of Waters (4,506,473).

The patent to Cheshire shows an insect trap as discussed above, but does not show a carbon dioxide attractant. Waters shows a carbon dioxide insect attractant noting Figs. 1 and column 3, line 1-12 that flows into trap 11 by connecting tube 14 from reaction chamber 12. In reference to claims 53, 55, 56, 57, it would have been obvious to provide Cheshire with a carbon dioxide attractant as shown by Waters to attract more insects. In reference to claim 54, the combination of Cheshire as modified by Waters does not disclose where the carbon dioxide is supplied in relation to the fan. However, it would have been obvious to supply the carbon dioxide to a point above the fan to more effectively disperse the carbon dioxide to an area surrounding the trap.

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***Response to Amendment***

7. The declaration under 37 CFR 1.132 filed July 7, 2003 is insufficient to overcome the rejection of claims 42-64, 67-119 based upon Cheshire, Jr., and Waters as set forth in the last Office action because: facts presented are not germane to the rejection at issue and the showing is not commensurate in scope with the claims.

It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. As to the sales figures, there is no facts in regard to market share and the amount of money spent on advertizing.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Kurt Rowan". The signature is fluid and cursive, with the first name "Kurt" and last name "Rowan" clearly distinguishable.

KURT ROWAN

PRIMARY EXAMINER

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Sept. 21, 2003